

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 12, 1964.

An Act to regulate sales of certain land where the purchase money is payable by four or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 9th April, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Land Vendors Act, 1964".

Short title
and com-
mencement.

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Interpre-
tation.

2. In this Act, unless the context or subject matter otherwise indicates or requires—

“Instalment contract” means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by four or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by four or more part payments as aforesaid, but does not include—

- (a) a contract effecting a sale without resubdivision by a vendor who acquired less than five lots in a subdivision; or
- (b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

“Preliminary deposit” means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of “instalment contract” in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

“Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

“Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

“Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

“Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act.

Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,—

Requirements as to subdivisions.

(a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

(ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

(iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General

for

Land Vendors.

for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and

- (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- (c) a trustee holds office under a trust deed that—
 - (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

Approval of trustee may be revoked.

5. (1) The Minister—

- (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
- (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee. (2)

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the
former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

**Minister
may grant
exemptions
from
certain
provisions.**

6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

**Trust
deeds.**

7. (1) A trust deed complies with the provisions of this Act if it—

(a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

(b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

(ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

(c)

Land Vendors.

- (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section thirteen of this Act;
- (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
 - (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
 - (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the trust deed relates where inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
- (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act. Certain advertisements prohibited.

9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract". Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

(2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—

(a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—

(i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that he will refund to the purchaser the costs, not exceeding an amount prescribed by regulations under this Act, incurred by the purchaser as a client of a solicitor or conveyancer

Land Vendors.

conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Act as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as his client; or

- (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and
- (b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

Form of
instalment
contracts.

10. (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision in which the lot is comprised. (2)

Land Vendors.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

- (a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor; and
- (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before receiving such payment, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract he gives or causes to be given to the purchaser such notices.

Notices to be given to purchasers.

Land Vendors.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that behalf.

(3) It shall be a failure to comply with the requirements of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than that known as ten point Times; or
- (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section had been complied with.

Land Vendors.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser—

Instalment contract to contain implied term for assurance of lot to purchaser.

- (a) shall have paid not less than fifteen per centum of the purchase money; or
- (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

- (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;
- (ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and
- (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2)

Land Vendors.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

(a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or

(b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed, where the vendor and purchaser have so agreed.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

Notice of intention to charge land to be given to purchaser and trustee.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3)

Land Vendors.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

(b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act,

then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee under the instalment contract.

(4) In this section, “vendor” includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include undertakings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

(a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and

(b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot comprised in a primary application shall be deemed to include undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

(a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;

(b)

Land Vendors.

- (b) to supply from time to time as required by the purchaser information as to the progress of such application; and
- (c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

- (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and
- (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

17. (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

(2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed.

Stipulations in instalment contracts avoiding trustees' liabilities to be void.

19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses.

Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.

20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void.

Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

Payments to trustees or agents deemed to be payments to vendor.

22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such

Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

Duties of vendors where lot is not under Real Property Act, 1900.

23. Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

Land Vendors.

(2) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

FIRST SCHEDULE.

LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as..... (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

Land Vendors.

Sec. 7 (1)
(f) (iv).

SECOND SCHEDULE.
LAND VENDORS ACT, 1964.

NOTICE TO VENDOR.

To

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

Sec. 7 (1)
(f) (v).

THIRD SCHEDULE.
LAND VENDORS ACT, 1964.

NOTICE TO PURCHASER.

To

the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money. Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay.

If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

FOURTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...., as certified by town/shire clerk's certificate number of 19.....

The vendor of the said land is (state full name and address of vendor).

The legal owner of the said land is (state full name and address of legal owner) whose title is evidenced by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER THAN (delete the words "other than" if inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT (delete the word "except" if inappropriate).

The name and address of the trustee for purchasers is.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,

(Witness.)

FIFTH

Land Vendors.

Sec. 12 (1).

FIFTH SCHEDULE.

LAND VENDORS ACT, 1964.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment contract you should carefully read this notice and the notice headed "Particulars of Title".

2. If you have paid a preliminary deposit following agreement with the vendor of the land or his agent to buy the land on terms (by an instalment contract), the vendor must within seven days after the deposit was paid either—

- (a) send you a contract together with an undertaking by the vendor to refund to you the costs (not exceeding the amount prescribed by the regulations under the Land Vendors Act, 1964) incurred by you in procuring advice on certain matters from your solicitor or conveyancer; or
- (b) authorise the trustee to refund the preliminary deposit to you and send you a notice that he is unwilling or unable to sign a contract.

If you receive a contract together with an undertaking, you should consult your solicitor or conveyancer, **BEFORE SIGNING THE CONTRACT.**

If you receive a contract and within fourteen days return it signed by you to the vendor and do all other things required of you by the contract, you are entitled, within twenty-one days after you first received a contract, to have sent to you by the vendor a copy of the contract signed by the vendor. If you have received a copy of the contract within seven days after paying the preliminary deposit, and you do what is required of you as stated earlier in this paragraph, the vendor is prohibited from selling to anyone else during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is usually not until you have paid all the instalments or in the circumstances mentioned in paragraph 6 (a) hereunder that you are entitled to have the land transferred into your name.

4. The contract may become binding on you from the moment you sign it, whether you have paid a deposit or not. A contract is not necessarily a formal printed document. A series of letters, or even a receipt for a deposit, if it contains certain simple statements may legally evidence a binding contract. But a receipt which bears the words "subject to contract" or similar words does not generally evidence a binding contract.

Land Vendors.

5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer)—

- (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy;
- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road;
- (c) whether water, gas, electricity, sewerage, or other services are available;
- (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above;
- (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.

(b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed

to

Land Vendors.

to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee. After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.

(c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1964.

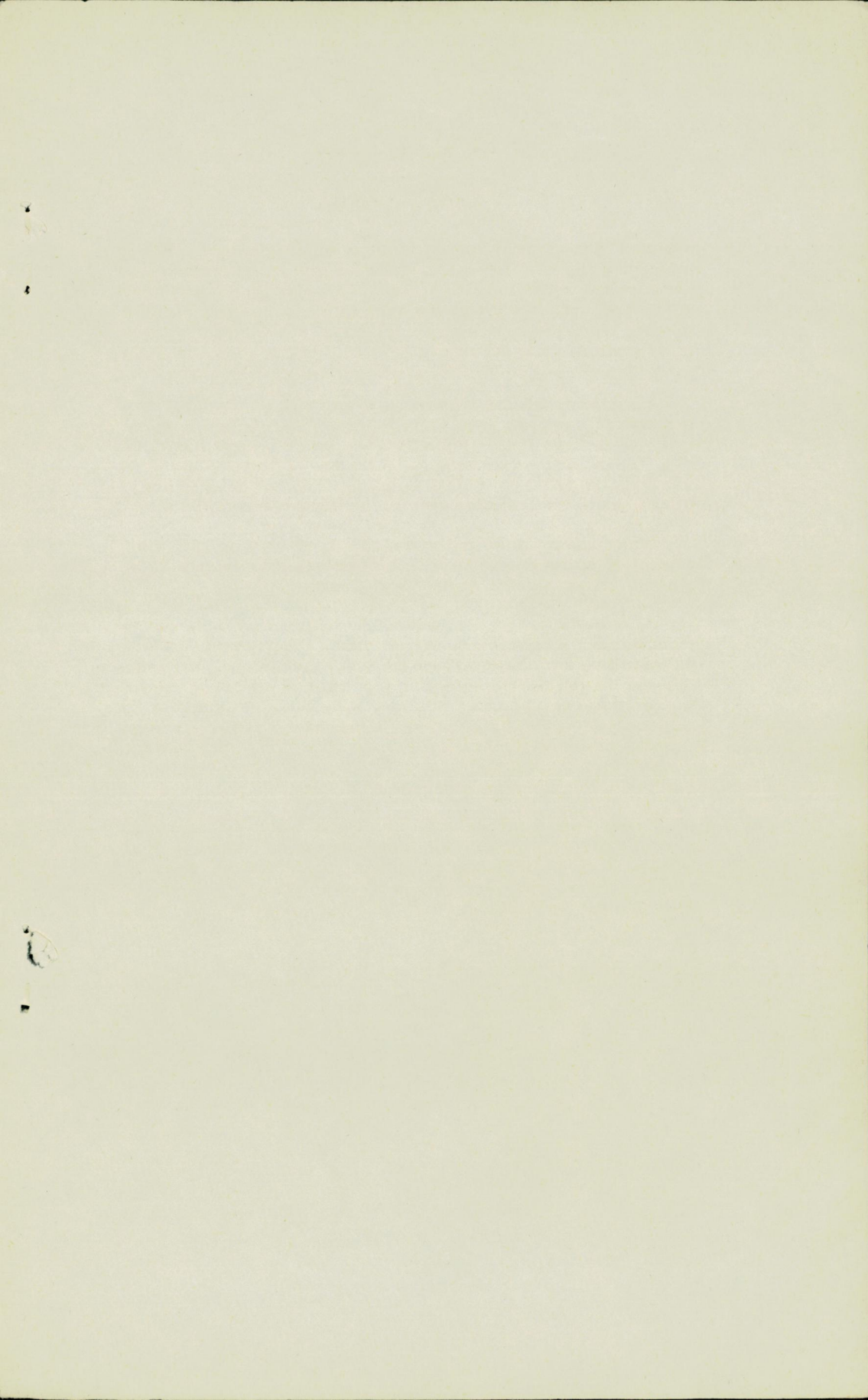
7. Within one month of the date of the contract you should ensure payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name, or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the trustee for the purchasers.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964



*Land Vendors.***24. Any—**

Penalty.

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or
- (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent the act or omission constituting the offence.

Liability of directors of corporations.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings for offences.

No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

- (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

- (b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contravention of this Act, or the vendor fails to comply with any stipulation or undertaking to be complied with by the vendor and implied by this Act in an instalment contract, the purchaser shall be entitled by notice in writing served on the vendor to rescind the instalment contract and thereupon shall be entitled to recover as a debt any moneys paid by him under the instalment contract in any court of competent jurisdiction.

Notices.

28. The provisions of section one hundred and seventy of the Conveyancing Act, 1919, as amended by subsequent Acts, relating to the service of notices shall apply to this Act, and for the purposes of such provisions the "last place of abode or business" of a trustee under a trust deed referred to in this Act or of a vendor by whom such a trustee has been appointed includes the address for service of notices on the trustee or vendor, as the case may be, specified in the trust deed.

Regulations.

29. (1) The Governor may make regulations, not inconsistent with this Act—

- (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 1 April, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 12, 1964.

An Act to regulate sales of certain land where the purchase money is payable by four or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 9th April, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Land Vendors Act, 1964".
- (2)
- Short title and commencement.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Interpre-
tation.

2. In this Act, unless the context or subject matter otherwise indicates or requires—

“Instalment contract” means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by four or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by four or more part payments as aforesaid, but does not include—

- (a) a contract effecting a sale without subdivision by a vendor who acquired less than five lots in a subdivision; or
- (b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

“Preliminary deposit” means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of “instalment contract” in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

“Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

“Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

“Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

“Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act.

Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,—

Requirements as to subdivisions.

- (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or
- (ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or
- (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

Land Vendors.

for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and

- (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- (c) a trustee holds office under a trust deed that—
 - (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

Approval of trustee may be revoked.

5. (1) The Minister—

- (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
- (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee. (2)

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the
former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

Minister
may grant
exemptions
from
certain
provisions.

6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

Trust
deeds.

7. (1) A trust deed complies with the provisions of this Act if it—

(a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

(b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

(ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

(c)

Land Vendors.

- (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section thirteen of this Act;
- (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
 - (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
 - (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the trust deed relates where inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

(f) contains covenants binding the trustee that he will—

- (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
- (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
- (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
- (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
- (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;

(g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed.

Stipulations in instalment contracts avoiding trustees' liabilities to be void.

19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses.

Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.

20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void.

Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

Payments to trustees or agents deemed to be payments to vendor.

22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor

Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

Duties of vendors where lot is not under Real Property Act, 1900.

23. Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

Land Vendors.

24. Any—

Penalty.

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or
- (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent the act or omission constituting the offence.

Liability
of directors
of corpora-
tions.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings
for offences.

No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

- (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

- (b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contravention of this Act, or the vendor fails to comply with any stipulation or undertaking to be complied with by the vendor and implied by this Act in an instalment contract, the purchaser shall be entitled by notice in writing served on the vendor to rescind the instalment contract and thereupon shall be entitled to recover as a debt any moneys paid by him under the instalment contract in any court of competent jurisdiction.

Notices.

28. The provisions of section one hundred and seventy of the Conveyancing Act, 1919, as amended by subsequent Acts, relating to the service of notices shall apply to this Act, and for the purposes of such provisions the "last place of abode or business" of a trustee under a trust deed referred to in this Act or of a vendor by whom such a trustee has been appointed includes the address for service of notices on the trustee or vendor, as the case may be, specified in the trust deed.

Regulations.

29. (1) The Governor may make regulations, not inconsistent with this Act—

- (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

(2)

Land Vendors.

(2) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

FIRST SCHEDULE.

LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as..... (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

Sec. 7 (1)
(f) (iv).

SECOND SCHEDULE.
LAND VENDORS ACT, 1964.

NOTICE TO VENDOR.

To
.....

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

Sec. 7 (1)
(f) (v).

THIRD SCHEDULE.
LAND VENDORS ACT, 1964.

NOTICE TO PURCHASER.

To
.....,

the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money. Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay. If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

FOURTH SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 12 (1).

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...., as certified by town/shire clerk's certificate number of 19.....

The vendor of the said land is (state full name and address of vendor).

The legal owner of the said land is (state full name and address of legal owner) whose title is evidenced by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER THAN (delete the words "other than" if inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT (delete the word "except" if inappropriate).

The name and address of the trustee for purchasers is.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me, (Witness.)

FIFTH

Land Vendors.

Sec. 12 (1).

FIFTH SCHEDULE.
LAND VENDORS ACT, 1964.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment contract you should carefully read this notice and the notice headed "Particulars of Title".

2. If you have paid a preliminary deposit following agreement with the vendor of the land or his agent to buy the land on terms (by an instalment contract), the vendor must within seven days after the deposit was paid either—

- (a) send you a contract together with an undertaking by the vendor to refund to you the costs (not exceeding the amount prescribed by the regulations under the Land Vendors Act, 1964) incurred by you in procuring advice on certain matters from your solicitor or conveyancer; or
- (b) authorise the trustee to refund the preliminary deposit to you and send you a notice that he is unwilling or unable to sign a contract.

If you receive a contract together with an undertaking, you should consult your solicitor or conveyancer, **BEFORE SIGNING THE CONTRACT.**

If you receive a contract and within fourteen days return it signed by you to the vendor and do all other things required of you by the contract, you are entitled, within twenty-one days after you first received a contract, to have sent to you by the vendor a copy of the contract signed by the vendor. If you have received a copy of the contract within seven days after paying the preliminary deposit, and you do what is required of you as stated earlier in this paragraph, the vendor is prohibited from selling to anyone else during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is usually not until you have paid all the instalments or in the circumstances mentioned in paragraph 6 (a) hereunder that you are entitled to have the land transferred into your name.

4. The contract may become binding on you from the moment you sign it, whether you have paid a deposit or not. A contract is not necessarily a formal printed document. A series of letters, or even a receipt for a deposit, if it contains certain simple statements may legally evidence a binding contract. But a receipt which bears the words "subject to contract" or similar words does not generally evidence a binding contract.

5.

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.

Certain advertisements prohibited.

9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".

Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

(2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—

(a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—

(i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that he will refund to the purchaser the costs, not exceeding an amount prescribed by regulations under this Act, incurred by the purchaser as a client of a solicitor or conveyancer

Land Vendors.

conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Act as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as his client; or

- (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and
- (b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

Form of
instalment
contracts.

- 10.** (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision in which the lot is comprised. (2)

Land Vendors.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

- (a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor; and
- (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before receiving such payment, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract he gives or causes to be given to the purchaser such notices.

Notices to be given to purchasers.

Land Vendors.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that behalf.

(3) It shall be a failure to comply with the requirements of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than that known as ten point Times; or
- (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section had been complied with.

Land Vendors.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser—

Instalment contract to contain implied term for assurance of lot to purchaser.

- (a) shall have paid not less than fifteen per centum of the purchase money; or
- (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

- (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;
- (ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and
- (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

Land Vendors.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

- (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or
- (b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed, where the vendor and purchaser have so agreed.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

Notice of intention to charge land to be given to purchaser and trustee.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3)

Land Vendors.

(3) Where a purchaser or his assignee—

- (a) has been given a notice referred to in subsection one of this section; and
- (b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act,

then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include undertakings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

- (a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and
- (b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot comprised in a primary application shall be deemed to include undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

- (a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;

(b)

Land Vendors.

- (b) to supply from time to time as required by the purchaser information as to the progress of such application; and
- (c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

- (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and
- (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

17. (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

(2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer)—

- (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy;
- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road;
- (c) whether water, gas, electricity, sewerage, or other services are available;
- (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above;
- (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.

(b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed
to

Land Vendors.

to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee. After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.

(c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1964.

7. Within one month of the date of the contract you should ensure payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name, or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the trustee for the purchasers.

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,
Governor.

*Government House,
Sydney, 9th April, 1964.*

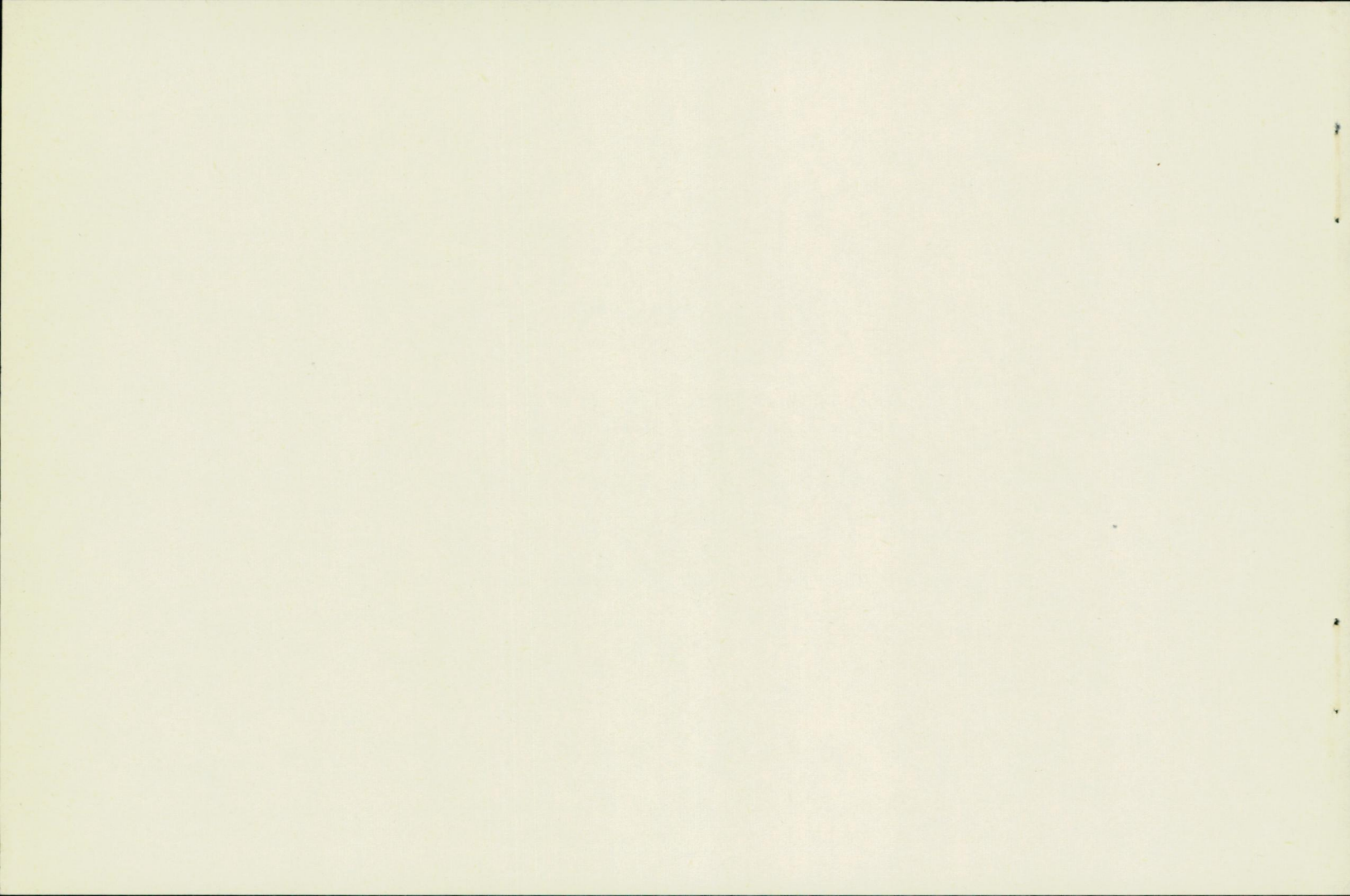
LAND VENDORS BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 31 March, 1964.*

No. 1.—Page 2, clause 2, line 10. *Omit “three” insert “four”.*

No. 2.—Page 2, clause 2, line 16. *Omit “three” insert “four”.*

No. 3.—Page 1, Title, line 2. *Omit “three” insert “four”.*



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1964.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 31 March, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to regulate sales of certain land where the purchase money is payable by ~~three~~ **four** or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Land Vendors Act, 1964".
- (2) Short title and commencement.

31581 286—A

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Interpretation.

10 “Instalment contract” means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by ~~three~~ **four** or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by ~~three~~ **four** or more part payments as aforesaid, but does not include—

15 (a) a contract effecting a sale without resub-
20 division by a vendor who acquired less than five lots in a subdivision; or

(b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

25 “Preliminary deposit” means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of “instalment contract” in this section) by a person in connection with the proposed purchase of a lot
30 in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and
35 purchase of such land.

“Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

5 “Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

10 “Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

15 “Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act. Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,— Requirements as to subdivisions.

25 (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

(ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

30 (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

Land Vendors.

- 5 for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and
- 10 (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- 15 (c) a trustee holds office under a trust deed that—
- (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - 20 (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

25 **5. (1) The Minister—**

- 30 (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
- 35 (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.

Approval of trustee may be revoked.

(2)

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

Minister may grant exemptions from certain provisions.

7. (1) A trust deed complies with the provisions of this Act if it—

Trust deeds.

(a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

(b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

(ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

(c)

Land Vendors.

- 5 (c) has annexed thereto a copy of the form or forms of
instalment contract to be used in connection with
the sale of the land comprised in the subdivision
(which form or forms shall provide that all moneys
payable thereunder by way of preliminary or other
deposit or fifteen per centum of the purchase price
(whichever is the greater) shall be paid by the
purchaser to the trustee) and the form or forms of
mortgage to be used for the purposes of section
10 thirteen of this Act;
- (d) contains a provision that all moneys received by the
trustee from a purchaser under an instalment con-
tract shall be retained by him until he has been
authorised by the vendor to refund any such
15 moneys, or—
- (i) the trustee has satisfied himself that the
purchaser has been given the notices pres-
cribed in section twelve of this Act; and
- 20 (ii) an instalment contract signed by both the
vendor and the purchaser or their properly
constituted attorneys has been presented to
him for inspection and the written authority
of the purchaser to account to the vendor
for such moneys has been furnished to
25 him;
- (e) contains a covenant binding the vendor that he will,
upon demand made by the trustee or any registered
public accountant appointed by the trustee, make
available for inspection the whole of the books of
30 the vendor relating to the subdivision to which the
trust deed relates and give to the trustee or to any
such registered public accountant such oral or
written information as he requires with respect to
the subdivision to which the trust deed relates where
35 inspection of such books or such information is
necessary for the proper and effective carrying out
of the trustee's powers, authorities, duties and
functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- 5 (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - 10 (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - 15 (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - 20 (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - 25 (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
 - 30 (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he 35 has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

5 8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.

Certain advertisements prohibited.

10 9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".

Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

20 (2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—

25 (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—

30 (i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that he will
35 refund to the purchaser the costs, not exceeding an amount prescribed by regulations under this Act, incurred by the purchaser as a client of a solicitor or conveyancer

Land Vendors.

5 conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Act as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as his client; or

10 (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and

15 (b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

25 In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

35 **10.** (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision
40 in which the lot is comprised. (2)

Form of instalment contracts.

Land Vendors.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly
5 appointed attorney, if—

- (a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the
10 vendor; and
- (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly
15 executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment
20 contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section
25 prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before
30 receiving such payment, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act
35 and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract he gives or causes to be given to the purchaser such notices.

Notices to be given to purchasers.

(2)

Land Vendors.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- 5 (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

10 (b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that behalf.

15 (3) It shall be a failure to comply with the requirements of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than that known as ten point Times; or
- 20 (c) contains a material mis-statement or inaccuracy, unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such
- 25 failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of

30 this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section

35 had been complied with.

Land Vendors.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser—

Instalment contract to contain implied term for assurance of lot to purchaser.

10 (a) shall have paid not less than fifteen per centum of the purchase money; or

15 (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

20 and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

25 (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;

(ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and

30 (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2)

Land Vendors.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

5 (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or

(b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,
10 where the vendor and purchaser have so agreed.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating
15 to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.
20

Notice of intention to charge land to be given to purchaser and trustee.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a
25 period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given
30 a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a
35 period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3)

Land Vendors.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

5 (b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act, then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee
10 under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest
15 capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include under-
20 takings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

25 (a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and

30 (b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot com-
prised in a primary application shall be deemed to include
undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

35 (a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;

(b)

Land Vendors.

(b) to supply from time to time as required by the purchaser information as to the progress of such application; and

5 (c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

10 (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and

15 (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any
20 requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

25 **17.** (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

30 (2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is
35 paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed. Stipulations in instalment contracts avoiding trustees' liabilities to be void.
19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses. Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.
20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void. Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.
21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person. Payments to trustees or agents deemed to be payments to vendor.
22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- 5 (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- 10 (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- 15 (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

20 **23.** Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser
 25 has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- 30 (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.
- 35

24.

Duties of vendors where lot is not under Real Property Act, 1900.

Land Vendors.

24. Any—

Penalty.

(a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or

5 (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to
10 imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed Liability of directors of corporations.
by a body corporate, each director of the body corporate at the time when the offence was committed and each person
15 holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent
20 the act or omission constituting the offence.

26. Proceedings for an offence under this Act shall be Proceedings for offences.
disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

No prosecution for an offence under this Act shall be
25 instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

30 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

(b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contravention of this Act, or the vendor fails to comply with any stipulation or undertaking to be complied with by the vendor and implied by this Act in an instalment contract, the purchaser shall be entitled by notice in writing served on the vendor to rescind the instalment contract and thereupon shall be entitled to recover as a debt any moneys paid by him under the instalment contract in any court of competent jurisdiction.

28. The provisions of section one hundred and seventy of the Conveyancing Act, 1919, as amended by subsequent Acts, relating to the service of notices shall apply to this Act, and for the purposes of such provisions the "last place of abode or business" of a trustee under a trust deed referred to in this Act or of a vendor by whom such a trustee has been appointed includes the address for service of notices on the trustee or vendor, as the case may be, specified in the trust deed.

29. (1) The Governor may make regulations, not inconsistent with this Act—

- (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

(2)

Land Vendors.

- (2) All regulations shall—
 - (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.
- 10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15

FIRST SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

- 20 According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as.....
- 25 (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name

30 of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

If you need assistance to enable you to exercise your rights 35 mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

SECOND SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO VENDOR.

To
5

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

15 THIRD SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (v).

NOTICE TO PURCHASER.

To
.....,

20 the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

25 Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.
35 Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay.
If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

5

FOURTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as
10 (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...
15 19....., as certified by town/shire clerk's certificate number of

The vendor of the said land is
(state full name and address of vendor).

The legal owner of the said land is
(state full name and address of legal owner) whose title is evidenced
20 by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER
25 THAN (delete the words "other than" if inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT
(delete the word "except" if inappropriate).

30 The name and address of the trustee for purchasers is.....
.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

35

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,
(Witness.)

FIFTH

Land Vendors.

FIFTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment
5 contract you should carefully read this notice and the notice headed
"Particulars of Title".

2. If you have paid a preliminary deposit following agreement
with the vendor of the land or his agent to buy the land on terms
(by an instalment contract), the vendor must within seven days
10 after the deposit was paid either—

(a) send you a contract together with an undertaking by the
vendor to refund to you the costs (not exceeding the amount
prescribed by the regulations under the Land Vendors Act,
1964) incurred by you in procuring advice on certain
15 matters from your solicitor or conveyancer; or

(b) authorise the trustee to refund the preliminary deposit to
you and send you a notice that he is unwilling or unable
to sign a contract.

If you receive a contract together with an undertaking, you should
20 consult your solicitor or conveyancer, BEFORE SIGNING THE
CONTRACT.

If you receive a contract and within fourteen days return it signed
by you to the vendor and do all other things required of you by the
contract, you are entitled, within twenty-one days after you first
25 received a contract, to have sent to you by the vendor a copy
of the contract signed by the vendor. If you have received a
copy of the contract within seven days after paying the preliminary
deposit, and you do what is required of you as stated earlier in this
paragraph, the vendor is prohibited from selling to anyone else
30 during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is
usually not until you have paid all the instalments or in the circum-
stances mentioned in paragraph 6 (a) hereunder that you are entitled
to have the land transferred into your name.

35 4. The contract may become binding on you from the moment you
sign it, whether you have paid a deposit or not. A contract is not
necessarily a formal printed document. A series of letters, or even
a receipt for a deposit, if it contains certain simple statements may
legally evidence a binding contract. But a receipt which bears the
40 words "subject to contract" or similar words does not generally
evidence a binding contract.

Land Vendors.

5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer)—

- 5 (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy;
- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road;
- 10 (c) whether water, gas, electricity, sewerage, or other services are available;
- (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary
- 15 deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above;
- 20 (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.
- 25

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that

30 you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have

35 paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe

40 certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.

(b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser

45 of a lot, and a deposit, if paid, must be held by the trustee appointed

Land Vendors.

to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee.

5 After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.

(c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the
10 vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1964.

7. Within one month of the date of the contract you should ensure
15 payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name,
20 or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would
25 be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the
30 trustee for the purchasers.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964
2s. 4d.]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1964.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to regulate sales of certain land where the purchase money is payable by ~~three~~ **four** or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Land Vendors Act, 1964".

Short title
and com-
mencement.
(2)

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Interpretation.

10 "Instalment contract" means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by ~~three~~ **four** or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by ~~three~~ **four** or more part payments as aforesaid, but does not include—

20 (a) a contract effecting a sale without resubdivision by a vendor who acquired less than five lots in a subdivision; or

(b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

25 "Preliminary deposit" means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of "instalment contract" in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

"Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

5 “Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

10 “Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

15 “Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act.

Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,—

Requirements as to subdivisions.

25 (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

30 (ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

35 (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

Land Vendors.

- 5 for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and
- 10 (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- 15 (c) a trustee holds office under a trust deed that—
- (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - 20 (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

- 25 **5. (1) The Minister—**
- (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
 - 30 (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.
- 35 (2)

Approval of trustee may be revoked.

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

5 6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

Minister
may grant
exemptions
from
certain
provisions.

10 7. (1) A trust deed complies with the provisions of this Act if it—

Trust
deeds.

15 (a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

20 (b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

25 (ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

30

(c)

Land Vendors.

- 5 (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section thirteen of this Act;
- 10
- 15 (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
- 20 (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
- 25 (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- 30 (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the trust deed relates where
- 35 inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- 5 (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - 10 (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - 15 (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - 20 (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - 25 (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
 - 30 (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he 35 has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed. Stipulations in instalment contracts avoiding trustees' liabilities to be void.
19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses. Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.
20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void. Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.
21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person. Payments to trustees or agents deemed to be payments to vendor.
22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- 5 (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- 10 (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- 15 (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

20 **23.** Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser
 25 has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

Duties of vendors where lot is not under Real Property Act, 1900.

- 30 (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- 35 (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

*Land Vendors.***24.** Any—

Penalty.

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or
- 5 (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to
 10 imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person
 15 holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent
 20 the act or omission constituting the offence.

Liability of directors of corporations.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held
 before a stipendiary magistrate sitting alone.

Proceedings for offences.

No prosecution for an offence under this Act shall be
 25 instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

- 30 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

- (b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contravention of this Act, or the vendor fails to comply with any stipulation or undertaking to be complied with by the vendor and implied by this Act in an instalment contract, the purchaser shall be entitled by notice in writing served on the vendor to rescind the instalment contract and thereupon shall be entitled to recover as a debt any moneys paid by him under the instalment contract in any court of competent jurisdiction.

28. The provisions of section one hundred and seventy of the Conveyancing Act, 1919, as amended by subsequent Acts, relating to the service of notices shall apply to this Act, and for the purposes of such provisions the "last place of abode or business" of a trustee under a trust deed referred to in this Act or of a vendor by whom such a trustee has been appointed includes the address for service of notices on the trustee or vendor, as the case may be, specified in the trust deed.

29. (1) The Governor may make regulations, not inconsistent with this Act—

- (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

(2)

Land Vendors.

(2) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- 5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15

FIRST SCHEDULE.
 LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

20 According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as.....

25 (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

35 If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

SECOND SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO VENDOR.

To
5

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

15 THIRD SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (v).

NOTICE TO PURCHASER.

To
.....,

20 the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

Under section thirteen of the abovementioned Act, you are entitled, 30 within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

35 Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay. If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

5

FOURTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as
10 (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...., as certified by town/shire clerk's certificate number of
15 19.....

The vendor of the said land is
(state full name and address of vendor).

The legal owner of the said land is
(state full name and address of legal owner) whose title is evidenced
20 by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER THAN (delete the words "other than" if
25 inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT (delete the word "except" if inappropriate).

30 The name and address of the trustee for purchasers is.....
.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

35

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,
(Witness.)

Land Vendors.

FIFTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment
5 contract you should carefully read this notice and the notice headed
"Particulars of Title".

2. If you have paid a preliminary deposit following agreement
with the vendor of the land or his agent to buy the land on terms
(by an instalment contract), the vendor must within seven days
10 after the deposit was paid either—

(a) send you a contract together with an undertaking by the
vendor to refund to you the costs (not exceeding the amount
prescribed by the regulations under the Land Vendors Act,
1964) incurred by you in procuring advice on certain
15 matters from your solicitor or conveyancer; or

(b) authorise the trustee to refund the preliminary deposit to
you and send you a notice that he is unwilling or unable
to sign a contract.

If you receive a contract together with an undertaking, you should
20 consult your solicitor or conveyancer, BEFORE SIGNING THE
CONTRACT.

If you receive a contract and within fourteen days return it signed
by you to the vendor and do all other things required of you by the
contract, you are entitled, within twenty-one days after you first
25 received a contract, to have sent to you by the vendor a copy
of the contract signed by the vendor. If you have received a
copy of the contract within seven days after paying the preliminary
deposit, and you do what is required of you as stated earlier in this
paragraph, the vendor is prohibited from selling to anyone else
30 during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is
usually not until you have paid all the instalments or in the circum-
stances mentioned in paragraph 6 (a) hereunder that you are entitled
to have the land transferred into your name.

35 4. The contract may become binding on you from the moment you
sign it, whether you have paid a deposit or not. A contract is not
necessarily a formal printed document. A series of letters, or even
a receipt for a deposit, if it contains certain simple statements may
legally evidence a binding contract. But a receipt which bears the
40 words "subject to contract" or similar words does not generally
evidence a binding contract.

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

5 8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.

Certain advertisements prohibited.

10 9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".

Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

20 (2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—

25 (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—

30 (i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that he will
35 refund to the purchaser the costs, not exceeding an amount prescribed by regulations under this Act, incurred by the purchaser as a client of a solicitor or conveyancer

Land Vendors.

5 conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Act as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as his client; or

10 (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and

15 (b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of
20 such preliminary deposit paid by him.
25

30 In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

35 **10.** (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision
40 in which the lot is comprised. (2)

Form of
instalment
contracts.

Land Vendors.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

(a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor; and

(b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before receiving such payment, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract he gives or causes to be given to the purchaser such notices.

Notices to be given to purchasers.

Land Vendors.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- 5 (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b) Any such notice purporting to have been
10 signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that behalf.

(3) It shall be a failure to comply with the require-
15 ments of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than that known as ten point Times; or
- 20 (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such
25 failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of
30 this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section
35 had been complied with.

Land Vendors.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser—

Instalment contract to contain implied term for assurance of lot to purchaser.

10 (a) shall have paid not less than fifteen per centum of the purchase money; or

15 (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

25 (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;

(ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and

30 (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2)

Land Vendors.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

5 (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or

(b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,
10 where the vendor and purchaser have so agreed.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating
15 to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his
20 intention so to charge the lot.

Notice of intention to charge land to be given to purchaser and trustee.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a
25 period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given
30 a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a
35 period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3)

Land Vendors.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

5 (b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act, then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee
10 under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest
15 capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include under-
20 takings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

25 (a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and

30 (b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot com-
35 prised in a primary application shall be deemed to include undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

(a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;

(b)

Land Vendors.

(b) to supply from time to time as required by the purchaser information as to the progress of such application; and

5 (c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

10 (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and

15 (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any
20 requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

25 **17.** (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

30 (2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is
35 paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer)—

- 5 (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy;
- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road;
- 10 (c) whether water, gas, electricity, sewerage, or other services are available;
- (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above;
- 15 (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.
- 20
- 25

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

30

6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.

35

40

(b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed

45

Land Vendors.

to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee.

- 5 After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.

- (c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the
10 vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1964.

7. Within one month of the date of the contract you should ensure
15 payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name,
20 or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would
25 be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the
30 trustee for the purchasers.

BY AUTHORITY:

V C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to regulate sales of certain land where the purchase money is payable by three or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Land Vendors Act, 1964".

(2) Short title and commencement.

Land Vendors.

"Primary application" means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

5 "Purchaser" includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

10 "Sell" includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and "sale" and "sold" have corresponding interpretations.

15 "Subdivision" has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act.

Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,—

Requirements as to subdivisions.

25 (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

30 (ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

35 (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

Land Vendors.

- 5 for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and
- 10 (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- 15 (c) a trustee holds office under a trust deed that—
- (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - 20 (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

- 25 **5.** (1) The Minister—
- (a) may by notice published in the Gazette revoke as Approval of trustee may be revoked. on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
 - 30 (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.
 - 35 (2)

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor. Minister may grant exemptions from certain provisions.

7. (1) A trust deed complies with the provisions of this Act if it— Trust deeds.

(a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

(b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

(ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

(c)

Land Vendors.

- 5 (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section 10 thirteen of this Act;
- 15 (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
- 20 (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
- 25 (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- 30 (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the trust deed relates where 35 inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- 5 (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - 10 (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - 15 (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - 20 (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
 - 25
 - 30 (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed.

Stipulations in instalment contracts avoiding trustees' liabilities to be void.

19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses.

Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.

20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void.

Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

Payments to trustees or agents deemed to be payments to vendor.

22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor

Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- 5 (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- 10 (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- 15 (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

20 **23.** Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser
 25 has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

Duties of vendors where lot is not under Real Property Act, 1900.

- 30 (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- 35 (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

Land Vendors.

24. Any—

Penalty.

(a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or

5 (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to
10 imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person
15 holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent
20 the act or omission constituting the offence.

Liability of directors of corporations.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings for offences.

No prosecution for an offence under this Act shall be
25 instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

30 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

(b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contraven-
5 tion of this Act, or the vendor fails to comply with any
stipulation or undertaking to be complied with by the vendor
and implied by this Act in an instalment contract, the pur-
chaser shall be entitled by notice in writing served on the
vendor to rescind the instalment contract and thereupon
10 shall be entitled to recover as a debt any moneys paid by
him under the instalment contract in any court of competent
jurisdiction.

28. The provisions of section one hundred and seventy of Notices.
the Conveyancing Act, 1919, as amended by subsequent Acts,
15 relating to the service of notices shall apply to this Act, and
for the purposes of such provisions the "last place of abode
or business" of a trustee under a trust deed referred to in
this Act or of a vendor by whom such a trustee has been
appointed includes the address for service of notices on the
20 trustee or vendor, as the case may be, specified in the trust
deed.

29. (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act—

- 25 (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- 30 (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

(2)

Land Vendors.

(2) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- 5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15

FIRST SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

20 According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as.....

25 (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name

30 of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

35 If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

SECOND SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (iv).

NOTICE TO VENDOR.

To
5

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

15 THIRD SCHEDULE.
LAND VENDORS ACT, 1964.

Sec. 7 (1)
(f) (v).

NOTICE TO PURCHASER.

To
.....,

20 the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

35 Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay. If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

5

FOURTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as
10 (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...., as certified by town/shire clerk's certificate number of
15 19.....

The vendor of the said land is
(state full name and address of vendor).

The legal owner of the said land is
(state full name and address of legal owner) whose title is evidenced
20 by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER THAN (delete the words "other than" if
25 inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT
(delete the word "except" if inappropriate).

30 The name and address of the trustee for purchasers is.....
.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

35

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,
(Witness.)

Land Vendors.

FIFTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1964.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment
5 contract you should carefully read this notice and the notice headed
"Particulars of Title".

2. If you have paid a preliminary deposit following agreement
with the vendor of the land or his agent to buy the land on terms
(by an instalment contract), the vendor must within seven days
10 after the deposit was paid either—

(a) send you a contract together with an undertaking by the
vendor to refund to you the costs (not exceeding the amount
prescribed by the regulations under the Land Vendors Act,
1964) incurred by you in procuring advice on certain
15 matters from your solicitor or conveyancer; or

(b) authorise the trustee to refund the preliminary deposit to
you and send you a notice that he is unwilling or unable
to sign a contract.

If you receive a contract together with an undertaking, you should
20 consult your solicitor or conveyancer, BEFORE SIGNING THE
CONTRACT.

If you receive a contract and within fourteen days return it signed
by you to the vendor and do all other things required of you by the
contract, you are entitled, within twenty-one days after you first
25 received a contract, to have sent to you by the vendor a copy
of the contract signed by the vendor. If you have received a
copy of the contract within seven days after paying the preliminary
deposit, and you do what is required of you as stated earlier in this
paragraph, the vendor is prohibited from selling to anyone else
30 during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is
usually not until you have paid all the instalments or in the circum-
stances mentioned in paragraph 6 (a) hereunder that you are entitled
to have the land transferred into your name.

35 4. The contract may become binding on you from the moment you
sign it, whether you have paid a deposit or not. A contract is not
necessarily a formal printed document. A series of letters, or even
a receipt for a deposit, if it contains certain simple statements may
legally evidence a binding contract. But a receipt which bears the
40 words "subject to contract" or similar words does not generally
evidence a binding contract.

5.

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

- 5 8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act. Certain advertisements prohibited.
- 10 9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the Receipts for certain preliminary deposits to indicate that sale is by instalment contract.
- 15 vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".
- 20 (2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—
- 25 (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—
- 30 (i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that he will
- 35 refund to the purchaser the costs, not exceeding an amount prescribed by regulations under this Act, incurred by the purchaser as a client of a solicitor or conveyancer

Land Vendors.

5 conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Act as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as his client; or

10 (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and

15 (b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

20 In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

35 **10.** (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision
40 in which the lot is comprised. (2)

Form of instalment contracts.

Land Vendors.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

- (a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor; and
- (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before receiving such payment, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract he gives or causes to be given to the purchaser such notices.

Notices to be given to purchasers.

(2)

Land Vendors.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- 5 (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b) Any such notice purporting to have been
10 signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that behalf.

(3) It shall be a failure to comply with the require-
15 ments of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- (b) is printed in type of a size smaller than that known as ten point Times; or
- 20 (c) contains a material mis-statement or inaccuracy, unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such
25 failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of
30 this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section
35 had been complied with.

Land Vendors.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser—

Instalment
contract to
contain
implied
term for
assurance
of lot to
purchaser.

10 (a) shall have paid not less than fifteen per centum of the purchase money; or

15 (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

25 (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;

(ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and

30 (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2)

Land Vendors.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

- 5 (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or
- (b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,
- 10 where the vendor and purchaser have so agreed.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.

Notice of intention to charge land to be given to purchaser and trustee.

25 (2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

30 (b) Where a purchaser who has been given a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a

35 period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3)

Land Vendors.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

5 (b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act, then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee
10 under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest
15 capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include under-
20 takings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

25 (a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and

30 (b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot com-
35 prised in a primary application shall be deemed to include undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

(a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;

(b)

Land Vendors.

(b) to supply from time to time as required by the purchaser information as to the progress of such application; and

5 (c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

10 (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and

15 (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any
20 requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

17. (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be
25 void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

(2) Notwithstanding any stipulation in an instalment
30 contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is
35 paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer)—

- 5 (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy ;
- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road ;
- 10 (c) whether water, gas, electricity, sewerage, or other services are available ;
- (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above ;
- 15 20
- (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.
- 25

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that

30 you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have

35 paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe

40 certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.

(b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser

45 of a lot, and a deposit, if paid, must be held by the trustee appointed

Land Vendors.

to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee.

5 After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.

(c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the

10 vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1964.

7. Within one month of the date of the contract you should ensure

15 payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name,

20 or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would

25 be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the

30 trustee for the purchasers.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964
[2s. 4d.]

Land Vendors.

- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road;
- (c) whether water, gas, electricity, sewerage, or other services are available;
- 5 (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject
- 10 to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to
- 15 paragraph 1 above;
- (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.
- 20 6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your
- 25 name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.
- 30 (b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on
- 35 the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee. After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.
- 40 (c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions
- 45 effected before the commencement of the Land Vendors Act, 1963.

Land Vendors.

7. Within one month of the date of the contract you should ensure payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name, or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the trustee for the purchasers.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963

[2s. 4d.]

No. , 1963.

A BILL

To regulate sales of certain land where the purchase money is payable by three or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. MANNIX;—31 *October*, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **1.** (1) This Act may be cited as the "Land Vendors Act, 1963".

(2) Short title and commencement.

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Interpretation.

“Instalment contract” means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by three or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by three or more part payments as aforesaid, but does not include—

- (a) a contract effecting a sale without resubdivision by a vendor who acquired less than five lots in a subdivision; or
- (b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

“Preliminary deposit” means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of “instalment contract” in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

“Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

5 “Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

10 “Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

15 “Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act. Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,— Requirements as to subdivisions.

25 (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

(ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

30 (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

35

Land Vendors.

- 5 for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and
- 10 (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- 15 (c) a trustee holds office under a trust deed that—
- (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - 20 (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

25 **5. (1) The Minister—**

- (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
- 30 (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.
- 35 (2)

Approval of trustee may be revoked.

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

Minister may grant exemptions from certain provisions.

7. (1) A trust deed complies with the provisions of this Act if it—

Trust deeds.

(a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

(b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve; and

(ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity as such trustee;

(c)

Land Vendors.

- 5 (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section
10 thirteen of this Act;
- 15 (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
- 20 (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
- 25 (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- 30 (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or
35 written information as he requires with respect to the subdivision to which the trust deed relates where inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- 5 (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - 10 (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - 15 (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - 20 (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - 25 (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
 - 30 (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed.

Stipulations in instalment contracts avoiding trustees' liabilities to be void.

19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses.

Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.

20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void.

Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

Payments to trustees or agents deemed to be payments to vendor.

22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor

Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- 5 (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- 10 (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- 15 (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

20 **23.** Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser
 25 has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

Duties of vendors where lot is not under Real Property Act, 1900.

- 30 (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- 35 (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

Land Vendors.

(b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

5 but where an instalment contract is entered into in contraven-
tion of this Act, or the vendor fails to comply with any
stipulation or undertaking to be complied with by the vendor
and implied by this Act in an instalment contract, the pur-
chaser shall be entitled by notice in writing served on the
10 vendor to rescind the instalment contract and thereupon
shall be entitled to recover as a debt any moneys paid by
him under the instalment contract in any court of competent
jurisdiction.

28. The provisions of section one hundred and seventy of Notices.
the Conveyancing Act, 1919, as amended by subsequent Acts,
15 relating to the service of notices shall apply to this Act, and
for the purposes of such provisions the "last place of abode
or business" of a trustee under a trust deed referred to in
this Act or of a vendor by whom such a trustee has been
appointed includes the address for service of notices on the
20 trustee or vendor, as the case may be, specified in the trust
deed.

29. (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act—

- 25 (a) varying or adding to any of the Schedules to this Act;
- (b) exempting from the provisions of this Act any class of vendors or any class of instalment contracts;
- 30 (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

(2)

*Land Vendors.***24.** Any—

Penalty.

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or
- 5 (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to

10 imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person

15 holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent

20 the act or omission constituting the offence.

Liability of directors of corporations.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings for offences.

No prosecution for an offence under this Act shall be

25 instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

- 30 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

- (2) All regulations shall—
 - (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.
- 10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15

FIRST SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

- 20 According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as.....
- 25 (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name

- 30 of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

35 If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

SECOND SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (iv).

NOTICE TO VENDOR.

To
5

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

15 THIRD SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (v).

NOTICE TO PURCHASER.

To
.....

20 the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

30 Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.
35 Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay. If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

5

FOURTH SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 12 (1).

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as
10 (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19...., as certified by town/shire clerk's certificate number of
15 19.....

The vendor of the said land is
(state full name and address of vendor).

The legal owner of the said land is
(state full name and address of legal owner) whose title is evidenced
20 by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER
THAN (delete the words "other than" if
25 inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT
(delete the word "except" if inappropriate).

30 The name and address of the trustee for purchasers is.....
.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

35

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,
(Witness.)

FIFTH

Land Vendors.

FIFTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1963.

ADVICE TO PURCHASERS.

1. Before paying a preliminary deposit or signing an instalment
5 contract you should carefully read this notice and the notice headed
“Particulars of Title”. If an outstanding equitable interest or any
form of security charged on the land is disclosed in the particulars
of title and you are not clear as to your rights, you should consult
a solicitor.
- 10 2. If you have paid a preliminary deposit following agreement
with the vendor of the land or his agent to buy the land on terms
(by an instalment contract), the vendor must within seven days
after the deposit was paid either—
- (a) send you a contract ; or
- 15 (b) authorise the trustee to refund the preliminary deposit to
you and send you a notice that he is unwilling or unable
to sign a contract.
- If you receive a contract and within fourteen days return it signed
by you to the vendor and do all other things required of you by the
20 contract, you are entitled, within twenty-one days after you first
received a contract, to have sent to you by the vendor a copy
of the contract signed by the vendor. If you have received a
copy of the contract within seven days after paying the preliminary
deposit, and you do what is required of you as stated earlier in this
25 paragraph, the vendor is prohibited from selling to anyone else
during the twenty-one days after you have received the contract.
3. When you buy land by means of an instalment contract, it is
usually not until you have paid all the instalments or in the circum-
stances mentioned in paragraph 6 (a) hereunder that you are entitled
30 to have the land transferred into your name.
4. The contract may become binding on you from the moment you
sign it, whether you have paid a deposit or not. A contract is not
necessarily a formal printed document. A series of letters, or even
a receipt for a deposit, if it contains certain simple statements may
35 legally evidence a binding contract. But a receipt which bears the
words “subject to contract” or similar words does not generally
evidence a binding contract.
5. In determining whether or not you should pay a preliminary
deposit before you sign an instalment contract or whether or not you
40 should sign an instalment contract, you should make enquiries and
satisfy yourself (after consulting your solicitor, if necessary)—
- (a) whether the land described in the contract (usually by a
lot number) is in fact the same as the land which you
intend to buy ;
- (b)

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

- 5 **8.** No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.
- 10 **9.** (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the
15 vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".
- 20 (2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—
- 25 (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—
- 30 (i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid; or
- 35 (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and
- (b)

Certain advertisements prohibited.

Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

Land Vendors.

(b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

10. (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision in which the lot is comprised.

Form of instalment contracts.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

(a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor: and

(b)

Land Vendors.

5 (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

11. No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, 10 duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section 15 prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

12. (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract and no person 20 shall tender an instalment contract for execution by a purchaser unless, before receiving such payment or tendering such contract, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that 25 complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act.

Notices to be given to purchasers.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

- 30 (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or
- (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b)

Land Vendors.

(b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not
5 authorised in that behalf.

(3) It shall be a failure to comply with the requirements of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- 10 (b) is printed in type of a size smaller than that known as ten point Times; or
- (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment
15 contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was
20 not in fact so misled or deceived.

(4) Any failure to comply with the provisions of this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable
25 precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section had been complied with.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation
30 entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time
35 of the execution of such instruments the purchaser—

Instalment contract to contain implied term for assurance of lot to purchaser.

- (a) shall have paid not less than fifteen per centum of the purchase money; or
- (b)

Land Vendors.

5 (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

15 (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;

(ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and

20 (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

30 (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or

35 (b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,

where the vendor and purchaser have so agreed.

(3)

Land Vendors.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.

Notice of intention to charge land to be given to purchaser and trustee.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

(b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act,

then

Land Vendors.

then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee
5 under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest
10 capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include under-
15 takings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

(a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days
20 after the making of the instalment contract ; and

(b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things
25 reasonably required of him to procure prompt registration of such plan.

16. (1) An instalment contract for the sale of a lot comprised in a primary application shall be deemed to include
undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

(a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in
30 respect of such application ;

(b) to supply from time to time as required by the purchaser information as to the progress of such application ; and

(c)

Land Vendors.

(c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

- 5 (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and
- 10 (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract)
- 15 conferred by law on purchasers against vendors unable or unwilling to comply with or remove any requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

20 **17.** (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue
25 delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

(2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where
30 the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

LAND VENDORS BILL, 1963.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to prohibit the sale by instalments of a lot in a subdivision where the lot forms part of a subdivision of five or more lots unless—
 - (i) the land is Torrens Title or an application to make it such has been made before the sale or the land is under old system title and was subdivided before the commencement of the Act to give effect to this Bill ;
 - (ii) the subdivision complies with the provisions of the Local Government Act, 1919 ; and
 - (iii) a trustee approved by the Minister has been appointed under a trust deed so approved to protect the interests of purchasers of the lots ;
- (b) to impose certain obligations on a vendor who accepts a preliminary deposit, subject to an instalment contract being entered into ;
- (c) to deem the contract (referred to as an instalment contract) in respect of any such sale, where the plan of subdivision is not registered, to contain certain undertakings by the vendor relating to the procuring of the registration of the plan ;
- (d) to empower the Minister to grant exemptions from certain of the provisions of the Act to give effect to this Bill ;
- (e) to specify the matters which the trust deed appointing the trustee referred to in paragraph (a) above is to contain ;
- (f) to require certain notices containing information as to land sold under an instalment contract, and as to the rights of purchasers of such land, to be given by the vendor to such purchasers ;
- (g) to deem every instalment contract to contain provisions entitling the purchaser to obtain an assurance of the land sold after payment of fifteen per centum of the purchase money or upon receipt of notice that the vendor proposes to mortgage or charge the land, subject to his granting a mortgage back to the vendor in respect of the balance of the purchase money ;
- (h) to imply certain stipulations in instalment contracts ;
- (i) to invalidate certain stipulations and provisions in instalment contracts ;
- (j) to impose on a vendor under an instalment contract certain duties relating to the procuring of the registration of the assurance referred to in paragraph (g) above ;
- (k) to make other provisions of a machinery or ancillary character.

LAND VENDORS BILL, 1923

EXPLANATORY NOTES

The Bill is intended to amend the law relating to the sale of land by vendors who are not registered proprietors. It is based on the principle that a vendor who is not registered should not be able to sell the land without the consent of the registered proprietor. The Bill provides for the registration of vendors and the issue of certificates of title to registered proprietors. It also provides for the registration of mortgages and the issue of certificates of title to mortgagees. The Bill is intended to simplify the law and to protect the interests of registered proprietors and mortgagees.

No. , 1963.

A BILL

To regulate sales of certain land where the purchase money is payable by three or more instalments; to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith.

[Mr. MANNIX;—31 *October*, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **1.** (1) This Act may be cited as the "Land Vendors Act, 1963".

(2)

Short title
and com-
mencement.

Land Vendors.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Interpretation.

“Instalment contract” means a contract, entered into after the commencement of this Act, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by three or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by three or more part payments as aforesaid, but does not include—

(a) a contract effecting a sale without resubdivision by a vendor who acquired less than five lots in a subdivision; or

(b) a contract for the sale of a lot in a strata plan registered as such under the Conveyancing (Strata Titles) Act, 1961, as amended by subsequent Acts.

“Preliminary deposit” means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of “instalment contract” in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

“Primary

Land Vendors.

“Primary application” means an application to the Registrar-General to bring land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

5 “Purchaser” includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

10 “Sell” includes offer to sell, hold oneself out as being willing to sell, and advertise for sale, and “sale” and “sold” have corresponding interpretations.

15 “Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts, and also includes subdivisions illustrated by plans registered pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts.

3. No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Act.

Sales by instalment contracts of lots in subdivisions.

4. A subdivision complies with the provisions of this Act if, at the time of the sale,—

Requirements as to subdivisions.

25 (a) (i) the land comprised in the subdivision is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

30 (ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected; or

35 (iii) although the land comprised in the subdivision is not under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, and no primary application has been lodged in the office of the Registrar-General for

Land Vendors.

- 5 for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General; and
- (b) the town or shire clerk of the council of the city, municipality or shire in which the land comprised in the subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with and the approval of the council pursuant to which the town or shire clerk has so certified has not lapsed; and
- 10
- 15 (c) a trustee holds office under a trust deed that—
- (i) relates to the subdivision;
 - (ii) complies with the provisions of this Act; and
 - (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.
- 20

Any approval referred to in paragraph (c) of this section may be given subject to such terms and conditions as the Minister thinks fit.

25 **5. (1) The Minister—**

- (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice his approval under this Act of any trustee appointed under a trust deed; and
- 30
- (b) shall in any such notice specify a date on or after which he proposes to exercise his powers under subsection three of this section unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.
- 35

Approval of trustee may be revoked.

(2)

Land Vendors.

(2) Any such revocation shall take effect on and from the day specified in the notice and referred to in paragraph (a) of subsection one of this section and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.

(3) Where the Minister revokes his approval of any trustee as aforesaid and the vendor fails, before the date referred to in paragraph (b) of subsection one of this section, to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Act, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this Act to be the trustee under the trust deed in respect of sales of lots made before his appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

(4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former

Land Vendors.

former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his appointment.

5 6. The Minister may by order published in the Gazette declare that the requirements of paragraph (c) of section four of this Act and such other provisions of this Act as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.

Minister
may grant
exemptions
from
certain
provisions.

10 7. (1) A trust deed complies with the provisions of this Act if it—

Trust
deeds.

15 (a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in paragraph (b) of section four of a person as trustee for purchasers of lots in the subdivision proposed to be sold;

20 (b) (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his duties as trustee have been completed, and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as

25 (ii) contains a covenant binding the trustee that he will, upon his ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i) of this paragraph, or by the Minister under section five of this Act, any moneys held by him or on his behalf, and any books of account kept by him, in his capacity is such trustee;

30

(c)

Land Vendors.

- 5 (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section thirteen of this Act;
- 10
- 15 (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by him until he has been authorised by the vendor to refund any such moneys, or—
- 20 (i) the trustee has satisfied himself that the purchaser has been given the notices prescribed in section twelve of this Act; and
- 25 (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to him for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to him;
- 30 (e) contains a covenant binding the vendor that he will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the trust deed relates where
- 35 inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Act and the trust deed;
- (f)

Land Vendors.

- (f) contains covenants binding the trustee that he will—
- 5 (i) exercise all due diligence and vigilance in carrying out his powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates;
 - 10 (ii) punctually account for all moneys paid to him in pursuance of this Act in accordance with the provisions of this Act and the trust deed;
 - 15 (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid;
 - 20 (iv) where he has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule to this Act, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule to this Act; and
 - 25 (v) where he has received a notice referred to in subsection one of section fourteen of this Act, serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule to this Act;
 - 30 (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

(2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which he 35 has acquired pursuant to paragraph (e) of subsection one of this section shall be guilty of an offence under this Act :

Provided

Land Vendors.

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or his solicitor.

5 8. No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.

Certain advertisements prohibited.

10 9. (1) Where a vendor or his agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or his agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".

Receipts for certain preliminary deposits to indicate that sale is by instalment contract.

20 (2) Where a vendor or his agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor—

25 (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either—

30 (i) tender to the purchaser for execution by him a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid; or

35 (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract; and

(b)

Land Vendors.

(b) where he tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection, shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of subsection two of section ten of this Act and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by him.

In this paragraph "the prescribed period" means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with subparagraph (i) of paragraph (a) of this subsection and, where the provisions of paragraphs (a) and (b) of subsection two of section ten of this Act have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

10. (1) A vendor under an instalment contract, or his agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision in which the lot is comprised.

Form of
instalment
contracts.

(2) Within twenty-one days after tendering a copy of the instalment contract to a purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or his duly appointed attorney, if—

(a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor; and

(b)

Land Vendors.

5 (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by him at or before the delivery to him of the counterpart of the contract duly executed as aforesaid.

10 **11.** No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule to this Act by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section
15 prevents any person from accepting any such payment from such trustee.

Vendor not to accept payment of instalments until 15 per cent. of purchase price paid.

20 **12.** (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract and no person shall tender an instalment contract for execution by a purchaser unless, before receiving such payment or tendering such contract, he gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule to this Act and that
25 complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule to this Act.

Notices to be given to purchasers.

(2) (a) The notice in or to the effect of the form in the Fourth Schedule to this Act—

30 (i) shall be signed by the vendor or by his duly appointed attorney and the signature shall be attested by a witness; or

(ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.

(b)

Land Vendors.

(b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not
5 authorised in that behalf.

(3) It shall be a failure to comply with the requirements of subsection one of this section if any notice given to the purchaser in pursuance thereof—

- (a) is in handwriting that is not clear and legible; or
- 10 (b) is printed in type of a size smaller than that known as ten point Times; or
- (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment
15 contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, and that the purchaser was
20 not in fact so misled or deceived.

(4) Any failure to comply with the provisions of this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable
25 precautions against such failure he had reasonable grounds to believe and did believe that the requirements of this section had been complied with.

13. (1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation
30 entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time
35 of the execution of such instruments the purchaser—

- (a) shall have paid not less than fifteen per centum of the purchase money; or
- (b)

Instalment contract to contain implied term for assurance of lot to purchaser.

Land Vendors.

5 (b) shall have received a notice referred to in subsection one of section fourteen of this Act and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise his rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall—

15 (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract;

(ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included; and

20 (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section two hundred and six of the Conveyancing Act, 1919, as amended by subsequent Acts, for the time being in force.

(2) Nothing in subsection one of this section prevents any mortgage referred to in that subsection from—

30 (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subparagraph (i) of that subsection; or

35 (b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,

where the vendor and purchaser have so agreed.

(3)

Land Vendors.

(3) The rights conferred on a purchaser by subsection one of this section shall be subject to subsection three of section fourteen of this Act.

14. (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in the form prescribed by regulations made under this Act of his intention so to charge the lot.

Notice of intention to charge land to be given to purchaser and trustee.

(2) (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection one of this section, the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection one of this section.

(b) Where a purchaser who has been given a notice referred to in subsection one of this section has within twenty-eight days after such notice was given to him served on the vendor a notice informing the vendor that the purchaser proposes to exercise his rights under the stipulation implied by section thirteen of this Act, the vendor shall not within a period of twenty-eight days after the service on the vendor of the notice so informing him charge the lot comprised in the instalment contract.

(3) Where a purchaser or his assignee—

(a) has been given a notice referred to in subsection one of this section; and

(b) has not exercised the rights conferred on him by the stipulation implied by section thirteen of this Act,

then

Land Vendors.

then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee
5 under the instalment contract.

(4) In this section, "vendor" includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest
10 capable of being the subject of such a charge as is referred to in subsection one of this section.

15. Every instalment contract relating to a lot in a sub-division the plan of which has not been registered in the office of the Registrar-General shall be deemed to include under-
15 takings by the vendor that—

Implied undertakings by vendor where plan of sub-division not registered.

(a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, he will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract; and
20

(b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, he will do all things reasonably required of him to procure prompt registration of such plan.
25

16. (1) An instalment contract for the sale of a lot comprised in a primary application shall be deemed to include undertakings by the vendor—

Implied undertakings in instalment contracts for sale of lots comprised in primary applications.

(a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application;
30

(b) to supply from time to time as required by the purchaser information as to the progress of such application; and

(c)

Land Vendors.

(c) promptly to attend to all matters reasonably necessary to procure issue of a certificate of title for the land comprised in such application.

(2) In respect of any such primary application—

- 5 (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the time limited by the instalment contract for making requisitions; and
- 10 (b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract)
- 15 conferred by law on purchasers against vendors unable or unwilling to comply with or remove any requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

20 **17.** (1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue

25 delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments.

(2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where

30 the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

18.

Land Vendors.

18. Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying him against, liability for breach of trust should he fail properly to perform the powers, authorities, duties and functions required of him as trustee having regard to the provisions of the trust deed.

Stipulations in instalment contracts avoiding trustees' liabilities to be void.

19. Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing his powers, authorities, duties and functions under this Act, or any part of those costs, charges and expenses.

Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void.

20. Any stipulation in an instalment contract to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in a lot agreed to be purchased, shall be void.

Stipulations in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

21. Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

Payments to trustees or agents deemed to be payments to vendor.

22. Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor

Duties of vendors where lot is under Real Property Act, 1900.

Land Vendors.

vendor by himself or his agent shall, if the purchaser has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

- 5 (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer; and
- 10 (b) within seven days after so lodging such transfer, notify in writing the purchaser or his solicitor that the vendor or his agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or his solicitor to inspect such receipt; and
- 15 (c) promptly attend to all matters reasonably necessary to procure registration of such transfer; and
- (d) notify in writing the purchaser or his solicitor when such transfer has been registered.

20 **23.** Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the Stamp Duties Act, 1920, as amended by subsequent Acts, and executed pursuant to section thirteen of this Act, is held by or on behalf of the vendor under such contract, such vendor by himself or his agent shall, if the purchaser
 25 has paid to him or his agent, as the case may be, the fees referred to in paragraph (a) of this section—

Duties of vendors where lot is not under Real Property Act, 1900.

- 30 (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance; and
- 35 (b) within seven days after so producing such conveyance, notify in writing the purchaser or his solicitor that the vendor or his agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or his solicitor to inspect such registered conveyance.

24.

Land Vendors.

24. Any—

Penalty.

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act; or
- 5 (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding five hundred pounds or to

10 imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

25. Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person

15 holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent

20 the act or omission constituting the offence.

Liability of directors of corporations.

26. Proceedings for an offence under this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

Proceedings for offences.

No prosecution for an offence under this Act shall be

25 instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

27. Nothing in this Act shall—

Savings.

- 30 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act;

(b)

Land Vendors.

(b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

5 but where an instalment contract is entered into in contraven-
tion of this Act, or the vendor fails to comply with any
stipulation or undertaking to be complied with by the vendor
and implied by this Act in an instalment contract, the pur-
chaser shall be entitled by notice in writing served on the
10 vendor to rescind the instalment contract and thereupon
shall be entitled to recover as a debt any moneys paid by
him under the instalment contract in any court of competent
jurisdiction.

28. The provisions of section one hundred and seventy of
the Conveyancing Act, 1919, as amended by subsequent Acts,
15 relating to the service of notices shall apply to this Act, and
for the purposes of such provisions the "last place of abode
or business" of a trustee under a trust deed referred to in
this Act or of a vendor by whom such a trustee has been
appointed includes the address for service of notices on the
20 trustee or vendor, as the case may be, specified in the trust
deed.

29. (1) The Governor may make regulations, not incon- Regulations.
sistent with this Act—

- 25 (a) varying or adding to any of the Schedules to this
Act;
- (b) exempting from the provisions of this Act any
class of vendors or any class of instalment
contracts;
- 30 (c) prescribing all matters which by this Act are
required or permitted to be prescribed or which
are necessary or convenient to be prescribed for
carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such
regulations shall be the Schedules to this Act.

(2)

Land Vendors.

- (2) All regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 - 5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.
- 10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15

FIRST SCHEDULE.
 LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (iv).

NOTICE TO PURCHASER.

To

- 20 According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as.....
- 25 (quote registered number; if the plan is unregistered give description of lot).

Under section thirteen of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on (name

30 of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

If you need assistance to enable you to exercise your rights 35 mentioned above, you should consult your solicitor.

.....
(Trustee.)

SECOND

Land Vendors.

SECOND SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (iv).

NOTICE TO VENDOR.

To
5

According to the books of account kept by me, the purchaser of lot number in the plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated for the sale of that lot.

.....
(Trustee.)

15 THIRD SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 7 (1)
(f) (v).

NOTICE TO PURCHASER.

To
.....,

20 the purchaser of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number; if the plan is unregistered give description of lot).

25 I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

30 Under section thirteen of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on (name of vendor) the vendor, to require him to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.
35 Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay. If

Land Vendors.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....
(Trustee.)

5

FOURTH SCHEDULE.
LAND VENDORS ACT, 1963.

Sec. 12 (1).

PARTICULARS OF TITLE

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as
10 (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of 19... , as certified by town/shire clerk's certificate number of
15 19.....

The vendor of the said land is
(state full name and address of vendor).

The legal owner of the said land is
(state full name and address of legal owner) whose title is evidenced
20 by (state volume and folium of the certificate of title or Crown grant or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER
THAN (delete the words "other than" if
25 inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT
(delete the word "except" if inappropriate).

30 The name and address of the trustee for purchasers is.....
.....

.....
(Signature of vendor or his duly appointed attorney or seal of vendor-company.)

35

Signed in my presence by the vendor, or his duly appointed attorney, who is personally known to me,
(Witness.)

FIFTH

Land Vendors.

FIFTH SCHEDULE.

Sec. 12 (1).

LAND VENDORS ACT, 1963.

ADVICE TO PURCHASERS.

- 5 1. Before paying a preliminary deposit or signing an instalment contract you should carefully read this notice and the notice headed "Particulars of Title". If an outstanding equitable interest or any form of security charged on the land is disclosed in the particulars of title and you are not clear as to your rights, you should consult a solicitor.
- 10 2. If you have paid a preliminary deposit following agreement with the vendor of the land or his agent to buy the land on terms (by an instalment contract), the vendor must within seven days after the deposit was paid either—
- 15 (a) send you a contract ; or
- (b) authorise the trustee to refund the preliminary deposit to you and send you a notice that he is unwilling or unable to sign a contract.
- If you receive a contract and within fourteen days return it signed by you to the vendor and do all other things required of you by the contract, you are entitled, within twenty-one days after you first received a contract, to have sent to you by the vendor a copy of the contract signed by the vendor. If you have received a copy of the contract within seven days after paying the preliminary deposit, and you do what is required of you as stated earlier in this paragraph, the vendor is prohibited from selling to anyone else during the twenty-one days after you have received the contract.
- 20 3. When you buy land by means of an instalment contract, it is usually not until you have paid all the instalments or in the circumstances mentioned in paragraph 6 (a) hereunder that you are entitled to have the land transferred into your name.
- 25 4. The contract may become binding on you from the moment you sign it, whether you have paid a deposit or not. A contract is not necessarily a formal printed document. A series of letters, or even a receipt for a deposit, if it contains certain simple statements may legally evidence a binding contract. But a receipt which bears the words "subject to contract" or similar words does not generally evidence a binding contract.
- 30 5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor, if necessary)—
- (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy ;
- (b)

Land Vendors.

- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road ;
- (c) whether water, gas, electricity, sewerage, or other services are available ;
- 5 (d) whether the vendor is the full owner of the land so as to enable him to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any form of security (i.e. mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above ;
- 10
- 15 (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.
- 20 6. (a) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent. of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.
- 25
- 30 (b) Subdivisions must be approved by the local council prior to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent. of the purchase money must be paid to the trustee. After the vendor and yourself have signed the contract and you have signed a written order authorising him to do so, the trustee may pay out the moneys held by him in accordance with that authority.
- 35
- 40 (c) Usually the title to the land in an instalment contract must be registered under the Real Property Act ("Torrens title"), or the vendor must have made application (a "primary application") to bring the land under the provisions of the Real Property Act. However, these requirements do not apply in the case of subdivisions effected before the commencement of the Land Vendors Act, 1963.
- 45

Land Vendors.

7. Within one month of the date of the contract you should ensure payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.

8. As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name, or if you do not take advantage of your right to call for a transfer (see paragraph 6 (a) above) you may still gain some protection of your interest by lodging a caveat if the land is under the Real Property Act or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would be to your advantage, you should consult a solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or his agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or his agent, you may seek such information from the trustee for the purchasers.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963